

Department of Mental Health
TRANSMITTAL LETTER

SUBJECT Subpoenas for DMH Employees and Mental Health Information		
POLICY NUMBER DMH Policy 460.1B	DATE MAR 27 2013	TL# 186

Purpose. This policy was generally updated.

Applicability. Applies Department of Mental Health (DMH)-wide.

Policy Clearance. Reviewed by affected responsible staff and cleared through appropriate MHA offices.

Implementation Plans. A plan of action to implement or adhere to this policy must be developed by designated responsible staff. If materials and/or training are required to implement this policy, these requirements must be part of the action plan. Specific staff should be designated to carry out the implementation and program managers are responsible for following through to ensure compliance. Action plans and completion dates should be sent to the appropriate authority. Contracting Officer Technical Representatives (COTRs) must also ensure that contractors are informed of this policy if it is applicable or pertinent to their scope of work. *Implementation of all DMH policies shall begin as soon as possible. Full implementation of this policy is effective upon publication date.*

Policy Dissemination and Filing Instructions. Managers/supervisors of DMH must ensure that staff are informed of this policy. Each staff person who maintains policy manuals must ensure that this policy is filed in the DMH Policy and Procedures Manual.


ACTION


REMOVE AND DESTROY

DMH Policy 460.1A, Subpoenas for
DMH Employees and Mental Health Records

INSERT

DMH Policy 460.1B


Stephen F. Barton
Director, DMH
3/27/13

<p>GOVERNMENT OF THE DISTRICT OF COLUMBIA</p> <p style="text-align: center;">★ ★ ★</p> <p style="text-align: center;"></p> <p style="text-align: center;">DEPARTMENT OF MENTAL HEALTH</p>	<p>Policy No. 460.1B</p>	<p>Date MAR 27 2013</p>	<p>Page 1</p>
<p>Supersedes DMH Policy 460.1A, Subpoenas for DMH Employees and Mental Health Records, dated October 14, 2010</p>			
<p>Subject: Subpoenas for DMH Employees and Mental Health Information</p>			

1. **Purpose.** To set forth the Department of Mental Health (DMH) policy and procedures concerning subpoenas for DMH employees and mental health information.
2. **Applicability.** Applies DMH-wide.
3. **Authority.** The Mental Health Establishment Amendment Act of 2011; District of Columbia Mental Health Information Act (MHIA), D.C. Official Code §7-1201 *et seq.* (2011 supp.); and the Health Insurance Portability and Accountability Act of 1996, as amended (HIPAA).
4. **Definitions.** For the purpose of this policy, the following definitions apply:
 - 4a. Mental Health Information – any written, recorded, or oral information acquired by a mental health professional in attending a client in a professional capacity which indicates the identity of a client and relates to the diagnosis or treatment of a client's mental or emotional condition. As used herein, mental health information includes mental health records.
 - 4b. Subpoena – a written command to appear at a certain time and place to give testimony in a legal matter.
 - 4c. Subpoena Duces Tecum - a subpoena that requires production of written documents or records or other tangible items.
 - 4d. Court Order – a command by a court or other legal tribunal to appear at a certain time and place to give testimony or produce written documents, records or other tangible items.
5. **Specific Requirements Regarding Subpoenas.**
 - 5a. DMH employees cannot ignore a subpoena, even if it is not accompanied by the proper authorization. It is important that DMH employees take the actions described in this policy to either comply with the subpoena or to seek legal assistance in responding to the subpoena.
 - 5b. Mental health information may be released pursuant to a subpoena only when the subpoena is accompanied by:
 - (1) an appropriate release of information (consent) form signed by the consumer in question, or
 - (2) a specific order signed by a judge in the District of Columbia which directs that the information be released to the requesting party.
 - 5c. Unauthorized disclosures of mental health information may result in civil and/or criminal penalties or disciplinary action being levied against the disclosing party.

6. **Receipt of Subpoenas.** DMH employees shall not accept service of a subpoena on behalf of DMH or another DMH employee unless expressly authorized to do so.

6a. If the subpoena is for a specific individual for testimony, and is delivered to an employee other than who is specified on the subpoena, the employee must immediately ensure the correct individual receives the subpoena or deliver the subpoena to the Office of General Counsel (OGC) at the Mental Health Authority or Saint Elizabeths Hospital.

6b. If the subpoena is for testimony and received by the named individual, the employee should contact the OGC for further guidance.

6c. If the subpoena is for mental health information, the subpoena should be forwarded to the appropriate custodian of mental health records (either the Director of Health Information Management at Saint Elizabeths Hospital or at the Mental Health Authority).

- Any subpoena for mental health information that is not located at Saint Elizabeths Hospital should be directed to the Director of Health Information Management at the Mental Health Authority or designee at a specific program (e.g., Comprehensive Psychiatric Emergency Program (CPEP), Mental Health Services Division, School Mental Health Program, or the Assessment Center).

7. **Handling Subpoenas for Mental Health Information.**

7a. If the subpoena for mental health information contains a signed consent form, the signed consent form must contain the same information that is on DMH HIPAA Form 3, Authorization to Use or Disclose Protected Health Information (Including Mental Health Information).

7b. If a consent form is not included, or a consent form is included which does not contain the same information as on the DMH form, and the subpoena is received more than one (1) week prior to the date it requests the mental health information be produced, the respective custodian of mental health records at the Mental Health Authority or Saint Elizabeths Hospital will:

- Immediately forward a copy of the DMH HIPAA Form 3 and a completed copy of the attached form letter (Exhibit 1) to the attorney who issued the subpoena, and
- Place a copy of this letter in the consumer's clinical record.

7c. If a subpoena is received with an appropriate consent form or court order, or if an appropriate consent form is subsequently submitted prior to the date specified in the subpoena, employees shall produce the requested mental health information in compliance with the subpoena; except in the case of subpoenas for mental health records for Mental Health Probable Cause hearings, records must be requested by noon of the business day the records are needed. In such instances, records from the point of hospital admission, only, will be provided by close of business the day of the request. Any historical records will be provided within one (1) week.

7d. If a subpoena is for psychological testing to include reports, score summaries, notes, raw data, evaluative summaries, a specific order signed by a judge is required which directs that the information be released to the requesting party.

7e. Contact the OGC in all other cases such as:

- when a subpoena without appropriate consumer authorization or court order is received less than one (1) week from the date the mental health information is due in court; or

- when the subpoena date is only one (1) week away and no appropriate response has been received to the form letter that was sent; or
- when the subpoena is from out-of-state.

The DMH employee receiving the subpoena must immediately contact the OGC at the Mental Health Authority or Saint Elizabeths Hospital so that a representative of that office can try to resolve the matter by negotiation with the attorney who issued the subpoena or by filing a motion to quash the subpoena before, or on the day of the hearing.

7f. It is important to notify the OGC as soon as it is determined that a subpoena cannot be complied with within the required time to allow sufficient time for the matter to be resolved or a motion to be filed.

7g. The custodian of mental health records may have to appear in court on the date the mental health information is to be produced in response to the Subpoena Duces Tecum. The custodian of mental health records will not have to appear in court if the party subpoenaing the records has agreed, in writing, to accept certified copies by a specified date in lieu of appearance.

7h. Procedures for Providing Disclosable Records.

(1) Original records will not be provided in response to properly authorized requests, except at the specific direction of a judge for his/her inspection. Instead, copies of the records, which have been certified as true copies by the appropriate DMH official shall be provided. The following language is used to certify true copies:

"I hereby certify that the attached records of (consumer name) are true and correct copies of the original medical and psychiatric record maintained by (agency name) in the usual course of business. As the custodian of records or designee, I am authorized to release these records in lieu of the originals."

(2) When the mental health records are voluminous or the consumer has several hospital admissions or community enrollments, and it is apparent that all of the material is not required, the person requesting the records will be asked to designate the documents he/she needs. If the person is unable to so designate which portions of the record he/she desires, an abstract of each admission/enrollment shall be provided.

- The abstract for inpatient records shall include a copy of the most recent admission/enrollment; and for all previous hospitalizations or enrollments, it shall include the latest individual recovery plan (comprehensive and review plan), face sheet, discharge summary, history and physical, and all core assessments. This may be modified based on the type of subpoena. For court orders, the entire record shall be copied.
- The abstract for outpatient records shall include a copy of the most recent year in its entirety and an abstract for prior years. This may be modified based on the type of subpoena. For court orders, the entire record shall be copied.

8. Subpoenas for Testimony in Court.

8a. A subpoena commanding a DMH employee to disclose mental health information of a consumer requires a release of information or a court order. If no authorization or court order is attached, contact the OGC.

8b. A subpoena commanding a DMH employee to provide testimony that does not include mental health information of a consumer does not require a release of information or a court order (e.g., witness of an incident between two employees).

8c. Employees should contact OGC if named individual has any questions or concerns regarding testimony.

9. **Documentation.** The custodian of mental health records and other subpoenaed employees shall maintain a record which will document the following and file or electronically scan the record of information in the consumer's clinical record:

9a. The name of each consumer whose mental health information was disclosed pursuant to this policy;

9b. The date the subpoena, court order, or request for disclosure was received; and

9c. The date the record was disclosed.


10. **Inquiries.** Questions regarding this policy should be addressed to the Office of General Counsel at the Mental Health Authority or Saint Elizabeths Hospital.

11. Related References.

DMH Privacy Manual

Approved By:

Stephen T. Baron
Director, DMH


(Signature) 3/27/13 (Date)

(Name and address of the attorney who issued the subpoena)

Subject: Request for Written Consent Re: Subpoena for Records of:

Dear: _____

Our office is in receipt of your subpoena dated _____ for the records of the consumer named above.

The Mental Health Information Act, D.C. Official Code § 7-1201.01, et seq. (2011 supp.), prohibits our disclosure of mental health records without the appropriate written consent of the consumer. You either did not provide a consent form or the consent form you provided does not contain all the necessary information. We have therefore enclosed a blank authorization form for your use. The completed form should be returned to:

(Name & Title of DMH staff member)

(Phone Number)

(Address of DMH program)

Because of the restrictions of the Mental Health Information Act, if we do not receive a properly completed consent form or other response from you by _____, we will be unable to provide you with the requested records. If you wish to respond to this letter, or wish for us to appear in court to respond and to state our objections, please contact the DMH Office of General Counsel at 202-673-2200.

Thank you for your prompt attention to this matter.

Sincerely Yours,

(DMH Program)

(Date)